IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

Crl.MC.No. 161 of 2007()

AGAINST THE ORDER DATED 17/10/2006 IN CRMP 5231 2006 IN CC.606/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT, ALATHUR

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PETITIONER: ACCUSED:

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1. JAGADEESH, S/O.BALAKRISHNA PILLAI,
   AGED 32 YEARS, RESIDING AT KIZHAKKETHARA
   VANDUZHY, ALATHUR TALUK,
   PALAKKAD DISTRICT.

2. DINESH S/O.BALAKRISHNA PILLAI,
   AGED 35 YEARS, DO.

3. ANANDAN, S/O.BALAKRISHNA PILLAI,
   AGED 37, DO.

4. SARASWATHY, D/O.BALAKRISHNA PILLAI,
   AGED 27, DO. DO.

5. BALAKRISHNA PILLAI, S/O.KARUNA PILLAI,
   AGED 65, DO. DO.

6. PARVATHY, W/O.BALAKRISHNA PILLAI,
   AGED 6O, DO.

BY ADV. SRI.JOHNSON P.JOHN
SRI.BABY MATHEW

RESPONDENTS: STATE & COMPLAINANT:

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1. STATE OF KERALA, REPRESENTED BY
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
   MANGALAM DAM POLICE STATION,
   PALAKKAD DISTRICT.

BY PUBLIC PROSECUTOR SMT.LATHA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 19/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.161 of 2007

Dated this the 19th day of January, 2007

ORDER

The petitioners are accused in a pending prosecution under Sections 143, 147, 148, 323 and 324 read with 149 I.P.C. PWs 1 to 7 have been examined as witnesses. They have supported the prosecution case. There was a counter case also. The disputes have been settled by the petitioners after the examination of the witnesses. The petitioners, in these circumstances, wanted PWs 1 to 7 to be recalled. The learned Magistrate rejected that prayer. The subsequent settlement of the dispute is not a sufficient reason to justify recall of the witnesses, it was held. Accordingly, the learned Magistrate proceeded to pass the impugned order, copy of which is produced as Annexure-2. The petitioners claim to be aggrieved by the impugned order. What is the grievance ? The learned counsel for the petitioners submits that the witnesses must have been recalled to enable them to give evidence in tune with the composition. Recalling witnesses to enable them to perjure merely because there has been a subsequent composition, is certainly not proper. The learned Magistrate, according to me, has committed no error which would justify invocation of the jurisdiction under Section 482 Cr.P.C.

2. The petitioners shall certainly be at liberty to urge before the learned Magistrate that the evidence that is already adduced do not establish the commission of any offence. They will also be entitled to contend that if at all any offence is revealed, only compoundable offences are revealed and that parties have already settled and compounded the matter. The petitioners shall also be entitled to urge before the learned Magistrate that if ultimately they were found guilty of any non compoundable offence, the fact that the disputes have been settled and the offences compounded by the victim must be taken into account while considering the question of sentence.

3. This Crl.M.C is, in these circumstances, dismissed, but with the above observations.

(R.BASANT, JUDGE)

rtr/-